

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 40 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KS ADITYAKUMRIBA

Versus

COMMISSIONER OF WEALTH TAX

Appearance:

MR DA MEHTA, MR RK PATEL AND MR BD KARIA FOR MR KC PATEL
for Petitioner
MR BJ SHELAT FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 06/02/97

ORAL JUDGEMENT

(Per R.K.Abichandani, J)

1. The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court the following question:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in placing the burden of proof on the assessee in penal proceedings under Section 18(1)(a) of the W.T.Act, 1957 and in confirming the penalty levied under the said provisions on the ground that the reasons for the delay were not convincing?"

2. Although under the provisions of Section 14(1) of the said Act return of wealth for the assessment year 1970-71 was due to be filed by the assessee on or before 30.6.70 it was actually submitted only on 20.1.1971, and there was thus a delay in the filing of the return. The assessee had sought extension of time only upto 30.9.1970. The Wealth Tax Officer levied penalty under section 18(1)(a) of the said Act of Rs.8548/- for the delayed filing of the return for the year 1970-71. The Commissioner of Wealth Tax (Appeals) finding that beyond 30.9.1970 there was neither any prayer for further time nor were there any circumstances coming in the way of filing of the return satisfactorily explained, dismissed the appeal. The Tribunal, confirmed the order of the Commissioner of Wealth Tax (Appeals) and the question referred to us arises from that decision.

3. The provisions of Section 18(1)(a) of the said Act, as they stood at the relevant time, read as under:

"18(1) If the Wealth Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person -

(a) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or

(b) xxxxxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxxxxx

he or it may, by order in writing, direct that

such person shall pay by way of penalty -

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

4. It is clear from the provisions of Section 18(1)(a) that penalty may be imposed if the concerned authority is satisfied that any person has without reasonable cause failed to furnish the return. The cause for not being able to file the return by the prescribed time would ordinarily be known to the person who has failed to furnish the return within that time. Therefore, it would be for such person to put forth the cause which is to his own knowledge and the authority is bound to consider the same for arriving at the satisfaction as to whether in view of the cause disclosed for not furnishing the return within the required time it can be said that such person has 'without reasonable cause' failed to furnish the return. The onus would, therefore, be clearly on the person who has failed to furnish the return in time to show that, that failure was due to a reasonable cause. This he can discharge by placing the relevant material before the concerned authority or even by pointing out the facts already on record or other circumstances of the case. The onus will be discharged if the cause is shown to be reasonable from any material which may be germane to the proceedings, and the competent authority would be bound to consider all such material and circumstances pointed out to it while arriving at the requisite satisfaction under Section 18(1).

5. In the event of there being no reasonable cause, the civil liability as contemplated in Section 18(1) results by way of penalty. The intention of the Legislature in enacting the said provision of Section 18(1)(a) is to emphasise the fact of loss of revenue and provide a remedy for such loss, with an element of coercion by providing for penalty. Therefore, it would be for the assessee to discharge his burden by showing the reasonable cause to the satisfaction of the concerned authority for the delay in the filing of the return, if the penal consequences are not to follow.

6. In the context of similar provision of Section 271(1)(a), of the Income Tax Act, 1961, the Supreme Court in CIT (Addl.) vs. I.M.Patel and Company reported in 196 ITR 297, reversing the decision of this Court, in terms, held, that it was for the assessee who files a belated return to show reasonable cause for the delay.

7. We therefore hold that the Tribunal was justified in placing the burden of proof on the assessee, in the penal proceedings under Section 18(1)(a) of the Act, and on that basis in confirming the penalty. The question referred to us is therefore answered in the affirmative, against the assessee. The Reference stands disposed of accordingly with no order as to costs.

(devu)